

CHAPTER NO. 263

SENATE BILL NO. 528

By Fowler

Substituted for: House Bill No. 911

By Fowlkes, Bone, Sands, Hood, Newton

AN ACT To amend Tennessee Code Annotated, Title 35, Chapter 50, Part 1, relative to fiduciary and trust estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 35, Chapter 50, Part 1, is amended by adding the following as a new appropriately numbered section:

Section 35-50-1___. (a) Except as provided in subsection (c), any written agreement including, without limitation, an agreement construing any provision of the trust or an agreement regarding any duty, power, responsibility, or action of a corporate trustee (including any indemnity or hold harmless provision) which is not contrary to the clear intent of the trust between a corporate trustee and all of the primary beneficiaries of a trust shall be final and binding on a corporate trustee and all beneficiaries of the trust, both current and future, as if ordered by a court with competent jurisdiction over all parties in interest, if all other persons who have a contingent, future or other interest in the trust would become primary beneficiaries only by reason of surviving a primary beneficiary.

(b) For purposes of this section:

(1) "Corporate Trustee" means a state or national bank, savings institution, or trust company authorized to exercise fiduciary powers and regulated by the office of the comptroller of the currency, office of thrift supervision, the Tennessee department of financial institutions or equivalent state banking supervisors.

(2) "Primary beneficiary" means a beneficiary who is (1) an adult and not incapacitated, (2) an adult who is incapacitated but represented by a guardian, (3) a minor who is represented by a parent or guardian, or, (4) any combination of the above; and, who is either: (1) currently entitled or eligible to receive any portion of the trust income or principal, or (2) assuming nonexercise of all powers of appointment, will receive, or be entitled to withdraw, all or a portion of the principal of the trust, if the beneficiary survives to the final date of distribution with respect to the beneficiary's share.

(c) This section shall not apply to an agreement that accelerates the termination of a trust, in whole or in part.

(d) In the trustee's sole discretion, the trustee may obtain opinion of counsel that any agreement proposed to be made under this section is not contrary to the clear intent of the trust instrument.

(e) In the trustee's sole discretion, the trustee may, but is not required to, seek a declaratory judgment from any court of competent jurisdiction that a proposed agreement is not contrary to the clear intent of the trust.

(f) This section applies to all existing and future trusts, but only as to agreements entered into on or after the effective date of this act.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 19, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 26th day of May 1999


DON SUNDQUIST, GOVERNOR